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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,306	03/15/2001	Thanos Karras	13033US01	9546
23446 7590 01/24/2007 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661			EXAMINER BLECK, CAROLYN M	
			ART UNIT	PAPER NUMBER
			3626	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
2 MONTHS		01/24/2007	PAPER	

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/681,306
Filing Date: March 15, 2001
Appellant(s): KARRAS ET AL.

Christopher N. George
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 26 October 2006 appealing from the Office action mailed 14 April 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,891,035	Wood et al.	4-1999
5,924,074	Evans	7-1999
5,851,186	Wood et al.	12-1998
6,678,703	Rothschild et al.	1-2004

Appellant's Background of the Invention

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Wood et al. (5,891,035).

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(A) As per claim 21, Wood discloses an ultrasonic diagnostic imaging system that is capable of accessing images and information from internal or external database over the Internet (Abstract) comprising:

(a) an ultrasound system which processes information to form ultrasonic images, wherein there are a plurality of ultrasound systems having wheels (Fig. 2, #200, #202) (Fig. 1-3, col. 2 line 60 to col. 3 line 10, col. 10 lines 43-56) (It is noted that an "ultrasound system" having wheels as is shown in Figure 2 is a "mobile facility" that is capable of being moved to a plurality of locations);

(b) a hospital information system or radiology information system for storing patient and physician data (Fig. 1-3, col. 2 lines 20-50, col. 2 line 60 to col. 3 line 10); and

(c) a modem for connecting to information sources, such as the ultrasound system (200) and the hospital information system (HIS) or radiology information system (RIS) (500), over the network, wherein patient and physician data is transmitted between the ultrasound system and the HIS/RIS, and the HIS/RIS is able to acquire information from the ultrasound system (reads on "mobile imaging unit/data center communication interface") (Fig. 1-3, col. 2 lines 20-50, col. 9 lines 40-65, col. 10 lines 44-56).

(B) As per claim 22, Wood discloses a modem for connecting to information sources, such as a ultrasound operator (202) in a practice and the hospital information system (HIS) or radiology information system (RIS) (500), over the network, wherein patient and

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physician data is transmitted between the ultrasound operator using a browser and the HIS/RIS (Fig. 1-3, col. 2 lines 20-50, col. 2 line 60 to col. 3 line 37, col. 9 lines 40-65, col. 10 lines 44-56).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-5, 7-9, 11, 13-14, and 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) in view of Wood et al. (5,851,186).

(A) As per claim 1, Evans discloses a medical records system that is accessible to remotely located health care providers (Abstract; col. 12 line 55 to col. 13 line 30) comprising:

(a) a point of care system to capture patient data at a point of care, wherein the health care provider is able to enter, review, annotate, analyze, and process patient data using the point of care system, wherein the patient data that is entered using the point of care system is stored in the patient data repository in a patient record (col. 4 line 64 to col. 5 line 28, col. 6 lines 9-36, col. 16 lines 2-16) (It is noted that entering data into a point of care system is considered to be a form of "a data generator for generating medical data storable in a data center");

(b) at least one point of care system (see the plurality of healthcare providers in Fig. 24, 416-420) for accessing and retrieving patient data from the patient data repository, wherein the point of care system issues a request for patient data, wherein the patient locator receives the request from the point of care system and communicates a patient ID (PID) to the data manager which locates the patient record using the PID, wherein the data manager delivers the requested data to the point of care system (Fig. 24, col. 3 lines 17-23, col. 8 line 61 to col. 9 line 13, col. 9 lines 37-60, col. 14 line 64 to col. 15 line 7, col. 18 lines 43-50) (It is noted that the point of care system of Evans is considered to be a form of "at least one data retriever"); and

(c) a patient data repository for storing and organizing patient data for access by the point of care system, wherein the point of care systems access the patient data repository from any geographical location, wherein for example, a point of care system used by a healthcare provider in Boston is able to access data on a server at Scripps Health (Fig. 24, col. 4 line 64 to col. 5 line 7, col. 13 lines 19-30, col. 14 line 64 to col. 15 line 2, col. 16 lines 44-53).

Evans discloses having data in a patient record captured by the point of care system and incorporated from external sources (e.g., a digital x-ray image file stored in raster pixel format) (col. 8 lines 29-38). However, Evans fails to expressly disclose that the data generator is a mobile imaging unit, wherein the mobile imaging unit is a mobile facility adapted to be used at a plurality of locations.

Wood discloses an ultrasound system accessible by a remotely located personal computer, wherein the ultrasound system forms ultrasonic images, which are stored in

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an image store, wherein the ultrasound system, wherein there are a plurality of ultrasound systems having wheels (Fig. 1, 15-17, col. 2 line 60 to col. 3 line 20, col. 12 line 66 to col. 13 line 26, col. 15 lines 23-43). It is noted that an "ultrasound system" having wheels as is shown in Figure 15-17 is a "mobile facility" that is capable of being moved to a plurality of locations.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Wood within the system of Evans with the motivation of allowing remotely located healthcare providers to access patient data (Evans; col. 1 lines 63-66), including diagnostic data gathered through ultrasound systems (Wood; col. 1 lines 52-57).

(B) As per claim 4, Evans discloses the point of care system for accessing data being used by a healthcare provider in a healthcare facility, such as a hospital (Fig. 24, col. 5 lines 12-20, col. 12 line 55 to col. 13 line 30).

(C) As per claim 5, Evans discloses a point of care system to capture patient data at a point of care, such as in a hospital (reads on "health care facility"), wherein the health care provider is able to enter, review, annotate, analyze, and process patient data using the point of care system, wherein the patient data that is entered using the point of care system is stored in the patient data repository in a patient record (col. 4 line 64 to col. 5 line 28, col. 6 lines 9-36, col. 16 lines 2-16) (It is noted that entering data into a point of

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care system is considered to be a form of “a data generator for generating medical data storable in a data center”).

(D) As per claims 7 and 8, Evans does not expressly disclose the data generator generating medical images and medical reports.

Wood discloses the ultrasound system generating images and reports (See Fig. 1, reference numbers 22, 24a-b, Fig. 4-5, col. 2 line 60 to col. 3 line 20, col. 9 lines 54-59, col. 10 lines 13-26, col. 15 lines 23-33).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Wood within the system of Evans with the motivation of allowing remotely located healthcare providers to access patient data (Evans; col. 1 lines 63-66), including diagnostic and image data and reports gathered through ultrasound systems (Wood; col. 1 lines 43-57).

(E) Claim 9 repeats the limitations of claim 1, and is therefore rejected for the same reasons as claim 1. As per the recitation of the “mobile imaging unit” being geographically distinct from the data center, Wood discloses in Fig. 15-17 that the ultrasound systems are in different locations from the centralized server (col. 13 line 29 to col. 14 line 40).

(F) Claim 11 repeats the limitations of claims 4-5, and is therefore rejected for the same reasons as claims 4-5, and incorporated herein.

(G) Claim 13 repeats the limitations of claim 1, and is therefore rejected for the same reasons as claim 1, and incorporated herein.

(H) Claim 14 repeats the limitations of claims 4 and 5, and is therefore rejected for the same reasons as those claims, and incorporated herein.

(I) As per claim 33, Evans discloses a method for remotely accessing patient data (Abstract; col. 2 lines 45-64) comprising:

(a) accessing a patient data repository by a remotely located point of care system (i.e., from any geographical location) (Fig. 24, col. 2 lines 45-64, col. 2 line 65 to col. 3 line 3, col. 4 line 64 to col. 5 line 28, col. 13 lines 23-30); and

(b) retrieving patient data from the patient data repository (Fig. 24, col. 3 lines 17-23, col. 8 line 61 to col. 9 line 13, col. 9 lines 37-60, col. 14 line 64 to col. 15 line 7, col. 18 lines 43-50).

Evans fails to expressly disclose "a mobile imaging unit," "wherein the mobile imaging unit is a mobile facility adapted to be used at a plurality of locations."

Wood discloses an ultrasound system accessible by a remotely located personal computer, wherein the ultrasound system forms ultrasonic images, which are stored in an image store, wherein the ultrasound system, wherein there are a plurality of ultrasound systems having wheels (Fig. 1, 15-17, col. 2 line 60 to col. 3 line 20, col. 12 line 66 to col. 13 line 26, col. 15 lines 23-43). It is noted that an "ultrasound system"

having wheels as is shown in Figure 15-17 is a "mobile facility" that is capable of being moved to a plurality of locations.

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Wood within the system of Evans with the motivation of allowing remotely located healthcare providers to access patient data (Evans; col. 1 lines 63-66), including diagnostic data gathered through ultrasound systems (Wood; col. 1 lines 52-57).

(J). As per claim 34, Evans discloses the step of accessing patient data in the patient data repository of the electronic medical records system including providing several levels of security to access patient data by using a tiered password system, wherein a system administrator may have global password access to any patient data whereas a physician may have only access to patient records within their specialty (Fig. 1, col. 4 line 64 to col. 5 line 27, col. 15 lines 20-32). It is noted that Evan's tiered password system is considered to be a form of "authenticating access to the data center."

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Wood et al. (5,851,186) as applied to claim 1 above, and further in view of Wood et al. (5,891,035).

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(A) As per claim 3, Evans discloses the point of care system for accessing data being a desktop computer, laptop computer, or wireless pen computer (Fig. 24, col. 13 lines 12-15).

Evans and Wood fails to expressly disclose the data retriever comprising a mobile imaging unit.

Wood ('035) discloses an ultrasound system having direct access through a browser to pull ultrasound images, diagnostic images, or other patient and physician data located on other systems (Fig. 2, col. 2 lines 20-49, col. 8 lines 57-65, col. 9 line 65 to col. 10 line 22).

At the time the invention was made, it would have been obvious to include the features of Wood within the system of Evans with the motivation of providing a system operator with the ability to pull remotely located information into an ultrasound system to aid in an examination (Wood ('035); col. 1 lines 30-41).

6. Claims 6, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) and Wood et al. (5,851,186) as applied to claims 1, 9, and 13 above, and further in view of Rothschild et al. (6,678,703).

(A) As per claim 6, Evans and Wood fail to expressly disclose the data center being an application service provider (ASP).

Rothschild discloses a medical image management system that uses a central data management system to store and transmit electronic records containing medical

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images, wherein the central data management system is an ASP (Abstract, Fig. 1, col. 6 lines 17-21, col. 19 lines 20-31, col. 19 lines 48-58, col. 21 lines 9-16).

At the time the invention was made, it would have been obvious to include the features of Rothschild within the system of Evans with the motivation of reducing the costs associated with maintaining image management facilities onsite by providing an application service provider that is able to manage the medical images off site and without a large capital expenditure on computer hardware or software (Rothschild; col. 4 lines 51-63; col. 7 lines 38-67).

(B) Claims 12 and 16 repeat the same limitations as claim 6, and are therefore rejected for the same reasons as claim 6, and incorporated herein.

7. Claims 17 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Appellant's Background of the Invention (pages 1-4 of the specification filed on 3/15/01) in view of Rothschild et al. (6,678,703).

(A) As per claim 17, Appellant's Background of the Invention discloses a remotely accessible application service provider (ASP) system (page 2, par. 5) comprising:

(a) a data center including at least one application, said data center including computing power for accessing applications (pages 2-3, par. 5-6); and

(b) a mobile imaging unit wherein said mobile imaging unit is a mobile facility adapted to be used at a plurality of locations (pages 1-2, par. 2-4).

The Appellant's Background of the Invention does not expressly disclose the application being "at least one medical application" or that the mobile imaging unit "accessing the output of medical applications."

Rothschild discloses downloading software programs (reads on "applications") from a website associated with the central data management system or ASP and running the programs on a personal computer, wherein these software programs are used to view, display, and manipulate received medical images (col. 17 line 58 to col. 18 line 7, col. 21 lines 8-12, col. 24 lines 4-37). It is noted that viewing, displaying, and manipulating medical images via software programs is considered to be a form of "accessing the output of the medical application." Rothschild discloses the local image workstation connected to the medical imaging system (reads on "mobile imaging unit") having local ASP software from the ASP (Fig. 1, col. 27 line 60 to col. 28 line 31), wherein the local image workstation is able to directly access images from their own local image workstation or access images in the central storage system (Fig. 1, col. 28 line 52 to col. 29 line 4), and wherein viewing the images is done through software downloaded from the central data management system (col. 24 lines 5-28). It is respectfully submitted that because a local image workstation connected to a medical imaging system is able to view their own images or access images in the central storage system, and in order to view the images viewing software is downloaded from a central system, it appears that Rothschild teaches a form of a mobile imaging unit accessing output (the images") from a medical application (software downloaded).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Rothschild within the system described in Appellant's Background of the Invention with the motivation of providing a means for all radiologists and referring doctors to view images regardless of if they have viewing software on their personal computers (see Rothschild; col. 24 lines 5-23).

(B) As per claim 19, Rothschild discloses radiologists, referring doctors, and image centers downloading software (reads on "healthcare facility") (col. 17 line 58 to col. 18 line 7, col. 21 lines 8-12, col. 24 lines 4-37).

The motivation for including the features of Rothschild within the system described in Appellant's Background of the Invention is given above in claim 17, and incorporated herein.

(C) As per claim 20, Appellant's Background of the Invention discloses the ASP may host, maintain, and deliver (reads on "storing") applications such as email systems, resource planning systems, customer relationship management systems, human resource management systems, and proprietary applications (reads on "administrative applications") to remote clients from the ASP's off-site data center (pages 2-3, par. 5-7).

8. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wood et al. (5,891,035) as applied to claim 21 above, and further in view of Evans (5,924,074).

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(A) As per claim 23, Wood does not expressly disclose an authentication module for authorizing access to the data center from at least one of the healthcare facility and the mobile imaging unit. Evans discloses accessing (reads on "retrieving") and updating patient data in the patient data repository (reads on "storing") of the electronic medical records system including authorizing health care providers and providing several levels of security to access patient data by using a tiered password system, wherein a system administrator may have global password access to any patient data whereas a physician may have only access to patient records within their specialty (Fig. 1, col. 4 line 64 to col. 5 line 27, col. 14 line 64 to col. 15 line 7, col. 15 lines 20-32). It is noted that Evan's tiered password system is considered to be a form of "an authentication module for authorizing access to the data center." At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Evans within the method of Wood with the motivation of ensuring the security of patient data (Evans; col. 15 lines 20-32).

9. Claims 24-32 and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans (5,924,074) in view of Rothschild et al. (6,678,703) and Wood et al. (5,891,035).

(A) As per claim 24, Evans discloses a method for storing patient data in a patient data repository that is accessible from any geographic location (col. 2 line 45 to col. 3 line 3) comprising:

(a) capturing patient data using a point of care system at the point of care of a patient and communicating over a network, such as the Internet (Fig. 24) the patient data to patient data repository (It is noted that capturing and communicating patient data over a network to the patient data repository is considered to be a form of "transmitting medical information") (Fig. 1, col. 2 line 65 to col. 3 line 23, col. 5 line 64 to col. 6 line 27, col. 12 line 54 to col. 13 line 56); and

(b) storing the patient data at the patient data repository (Fig. 24, col. 4 line 64 to col. 5 line 7, col. 13 lines 19-30, col. 14 line 64 to col. 15 line 2, col. 16 lines 44-53).

Evans fails to expressly disclose "a mobile imaging unit" transmitting the information to the data center. Rothschild discloses a medical imaging system (10) that pushes medical images to the central data management system (Fig. 1, col. 18 lines 28-55).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Rothschild within the method of Evans with the motivation of providing immediate electronic delivery and convenient, economic storage of radiologic and other medical images in a location that is accessible over the Internet (Rothschild; col. 1 lines 28-31, col. 2 lines 1-7).

Evans and Rothschild do not expressly disclose that the "mobile imaging unit is a mobile facility adapted to be used at a plurality of locations."

Wood discloses an ultrasound system which processes information to form ultrasonic images, wherein there are a plurality of ultrasound systems having wheels (Fig. 2, #200, #202) (Fig. 1-3, col. 2 line 60 to col. 3 line 10, col. 10 lines 43-56) (It is

noted that an "ultrasound system" having wheels as is shown in Figure 2 is a "mobile facility" that is capable of being moved to a plurality of locations).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Wood within the method taught collectively by Evans and Rothschild with the motivation of allowing physicians and ultrasound operators to communicate with each other from different locations (Wood; col. 1 line 55 to col. 2 line 7).

(B) As per claims 25 and 27, Evans discloses that accessing (reads on "retrieving") and updating patient data stored in the patient data repository (reads on "storing") of the electronic medical records system includes authorizing health care providers and providing several levels of security to access patient data by using a tiered password system, wherein a system administrator may have global password access to any patient data whereas a physician may have only access to patient records within their specialty (Fig. 1, col. 4 line 64 to col. 5 line 27, col. 14 line 64 to col. 15 line 7, col. 15 lines 20-32). It is noted that Evan's tiered password system is considered to be a form of "authenticating access to the data center."

(C) As per claim 26, Evans discloses at least one point of care system (see the plurality of healthcare providers in Fig. 24, 416-420) for accessing and retrieving patient data from the patient data repository, wherein the point of care system issues a request for patient data, wherein the patient locator receives the request from the point of care

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system and communicates a patient ID (PID) to the data manager which locates the patient record using the PID, wherein the data manager delivers the requested data to the point of care system (Fig. 24, col. 3 lines 17-23, col. 8 line 61 to col. 9 line 13, col. 9 lines 37-60, col. 14 line 64 to col. 15 line 7, col. 18 lines 43-50).

(D) As per claim 28, Evans discloses a method for storing patient data in a patient data repository that is accessible from any geographic location (col. 2 line 45 to col. 3 line 3) comprising:

(a) capturing patient data using a point of care system at the point of care of a patient and communicating over a network, such as the Internet (Fig. 24) the patient data to patient data repository (It is noted that capturing and communicating patient data over a network to the patient data repository is considered to be a form of "transmitting medical information") (Fig. 1, col. 2 line 65 to col. 3 line 23, col. 5 line 64 to col. 6 line 27, col. 12 line 54 to col. 13 line 56); and

(b) retrieving patient data from the patient data repository at a point of care system located in a hospital (Fig. 24, col. 3 lines 17-23, col. 5 lines 12-20, col. 8 line 61 to col. 9 line 13, col. 9 lines 37-60, col. 14 line 64 to col. 15 line 7, col. 18 lines 43-50).

Evans fails to expressly disclose "a mobile imaging unit" transmitting the information to the data center. Rothschild discloses a medical imaging system (10) that pushes medical images to the central data management system (Fig. 1, col. 18 lines 28-55).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Rothschild within the method of Evans with the motivation of providing immediate electronic delivery and convenient, economic storage of radiologic and other medical images in a location that is accessible over the Internet (Rothschild; col. 1 lines 28-31, col. 2 lines 1-7).

Evans and Rothschild do not expressly disclose that the "mobile imaging unit is a mobile facility adapted to be used at a plurality of locations."

Wood discloses an ultrasound system which processes information to form ultrasonic images, wherein there are a plurality of ultrasound systems having wheels (Fig. 2, #200, #202) (Fig. 1-3, col. 2 line 60 to col. 3 line 10, col. 10 lines 43-56) (It is noted that an "ultrasound system" having wheels as is shown in Figure 2 is a "mobile facility" that is capable of being moved to a plurality of locations).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Wood within the method taught collectively by Evans and Rothschild with the motivation of allowing physicians and ultrasound operators to communicate with each other from different locations (Wood; col. 1 line 55 to col. 2 line 7).

(E) As per claim 29, Evans discloses a system for communication between a point of care system and a health care facility (Fig. 24) comprising:

(a) a point of care system for capturing patient data, such as patient history and results of an examination useful for making a diagnosis (reads on "medical diagnostic

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information”) at the point of care of a patient and communicating over a network, such as the Internet (Fig. 24), the patient data to the patient data repository (It is noted that capturing and communicating patient data over a network to the patient data repository is considered to be a form of “transmitting medical diagnostic information”) (Fig. 1, col. 2 line 65 to col. 3 line 23, col. 5 line 64 to col. 6 line 27, col. 12 line 54 to col. 13 line 56);

(b) a patient data repository for receiving annotated and updated patient data from the point of care system, storing the patient data, and communicating the patient data over a network (Fig. 12, 24, col. 4 line 64 to col. 5 line 7, col. 13 lines 19-30, col. 14 line 64 to col. 15 line 2, col. 16 lines 44-53); and

(c) a health care facility, such as a healthcare provider in Boston, for accessing patient data from the patient data repository (Fig. 24, col. 13 lines 23-30).

Evans fails to expressly disclose “a mobile imaging unit” transmitting the information to the data center. Rothschild discloses a medical imaging system (10) that pushes medical images to the central data management system (Fig. 1, col. 18 lines 28-55).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Rothschild within the method of Evans with the motivation of providing immediate electronic delivery and convenient, economic storage of radiologic and other medical images in a location that is accessible over the Internet (Rothschild; col. 1 lines 28-31, col. 2 lines 1-7).

Evans and Rothschild do not expressly disclose that the “mobile imaging unit is a mobile facility adapted to be used at a plurality of locations.”

Wood discloses an ultrasound system which processes information to form ultrasonic images, wherein there are a plurality of ultrasound systems having wheels (Fig. 2, #200, #202) (Fig. 1-3, col. 2 line 60 to col. 3 line 10, col. 10 lines 43-56) (It is noted that an "ultrasound system" having wheels as is shown in Figure 2 is a "mobile facility" that is capable of being moved to a plurality of locations).

At the time the invention was made, it would have been obvious to one of ordinary skill in the art to include the features of Wood within the method taught collectively by Evans and Rothschild with the motivation of allowing physicians and ultrasound operators to communicate with each other from different locations (Wood; col. 1 line 55 to col. 2 line 7).

(F) As per claim 30, Rothschild discloses a website associated with the central data management system having programs that are capable of being downloaded (reads on "capable of storing medical applications") (col. 17 line 58 to col. 18 line 7, col. 21 lines 8-12, col. 24 lines 4-37). The Examiner respectfully submits that if these programs are downloadable from a website associated with the central data management system, they would also be "capable of" being executed by the servers associated with the central data management system (Fig. 1, col. 21 lines 9-17, col. 17 line 58 to col. 18 line 7, col. 21 lines 8-12, col. 24 lines 4-37). The motivation for including the features of Rothschild within the system described in Appellant's Background of the Invention is given above in claim 29, and incorporated herein.

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(G) As per claim 31, Rothschild discloses the local image workstation connected to the medical imaging system (reads on "mobile imaging unit") having local ASP software from the ASP for performing their role in integrating the storage and communication of images using workflow software (Fig. 1, col. 27 line 60 to col. 28 line 31), wherein the local image workstation is able to directly access images from their own local image workstation or access images in the central storage system (Fig. 1, col. 28 line 52 to col. 29 line 4), and wherein viewing the images is done through software downloaded from the central data management system (col. 24 lines 5-28). It is respectfully submitted that because a local image workstation connected to a medical imaging system has its own local ASP software, this is considered to be a form of "executing medical applications via said data center." The motivation for including the features of Rothschild within the system described in Appellant's Background of the Invention is given above in claim 29, and incorporated herein.

(H) As per claim 32, Rothschild discloses downloading software programs by a radiologist, imaging center, or referring doctor from a website associated with the central data management system or ASP (reads on "data center") and running the programs on a personal computer, wherein these software programs are used to view, display, and manipulate received medical images (col. 17 line 58 to col. 18 line 7, col. 21 lines 8-12, col. 24 lines 4-37). The motivation for including features of Rothschild within Evans is given above in claim 29, and incorporated herein.

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(I) As per claim 35, Evans discloses analyzing patient data patient records stored in the patient data repository via the point of care system (reads on “health care facility”), wherein the point of care system is remote from the patient data repository (Fig. 24, col. 4 line 64 to col. 5 line 28).

(J) As per claim 36, Evans discloses organizing and storing patient data from a plurality of geographic locations at the patient data repository using a point of care system in a hospital, wherein the patient is able to access and update patient information stored in the patient data repository (Fig. 24, col. 2 line 45 to col. 3 line 16, col. 14 line 64 to col. 15 line 7).

(10) Response to Argument

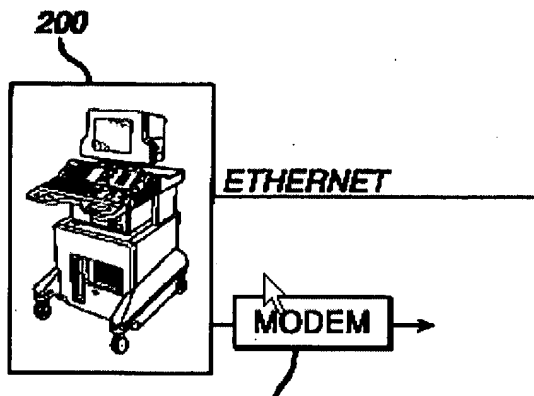
(I) At pages 10-12, Appellant argues that Wood ‘035 does not teach or fairly suggest at least “a mobile imaging unit including medical imaging equipment, wherein said mobile imaging unit is a mobile facility adapted to be used at a plurality of locations” as recited in claim 21.

In response, the Examiner respectfully submits that the ultrasound system shown below and described by Wood ‘035 is a form of “a mobile imaging unit including medical imaging equipment, wherein said mobile imaging unit is a mobile facility adapted to be used at a plurality of locations.” Appellant admits that Wood’s ultrasound system includes a cart with wheels. (See pages 10-11 of Appellant’s Brief). Furthermore, the ultrasound system also includes a number of conventional components including a

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scanhead with an ultrasonic transducer. (See Figures 1 and 3, col. 2 lines 60-67).

Thus, Wood teaches a mobile imaging unit as shown below (200) including medical imaging equipment (12) and (14), wherein said mobile imaging unit is a mobile facility adapted to be used at a plurality of locations (i.e., a cart with wheels).



The Examiner respectfully submits that as noted in MPEP § 2111, during patent examination, claims are given their broadest reasonable interpretation consistent with the specification. It is proper to use the specification to interpret what the Appellant meant by a word or phrase recited in the claim. However, it is not proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim. See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994); *Intervet America Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12 USPQ 2d 1474, 1476 (Fed. Cir. 1989).

Moreover, words of the claim are generally given their ordinary and customary meaning, unless it appears from the written description that they were used differently by the Appellant. Where an Appellant chooses to be his or her own lexicographer and defines terms with special meanings, he or she must set out the special definition

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explicitly and with “reasonable clarity, deliberateness, and precision” in the disclosure to give one of ordinary skill in the art notice of the change. See *Teleflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 273 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001), and MPEP § 2111.01. Pursuant to 35 USC § 112, 2nd paragraph “[i]t is Appellant's burden to precisely define the invention, and not the [examiner's].” *In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997). Therefore, it would **not** be proper for the examiner to give words of the claim special meaning when no such special meaning has been defined by the Appellant in the written description. In addition, it is noted that where a definition set forth in the written description is merely exemplary (i.e., where Appellant uses the phrase “for example”) the Examiner should not consider this a special definition. Finally, it would **not** be proper for the examiner to allow a claim and issue the application with an examiner's statement of reasons for allowance setting forth the special definition given to the words of the claim when no such special definition has been defined by the Appellant in the written description.

In this case, Appellant argues that “mobile imaging unit” is defined in the claims and the specification (par. 2, 3, 16, 17, and 59). The Examiner respectfully submits that these portions of the specification do not set out a special definition explicitly and with “reasonable clarity, deliberateness, and precision.” For example, Appellant recites that the “mobile imaging units may include equipment for MR (magnetic resonance), CT (computerized tomography), and the like, to facilitate medical examination of patients (par. 2). However, this is not a special definition that has been set out with reasonable

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clarity, deliberateness, and precision. Instead the definition includes language such as “e.g.” and “may” which is merely exemplary. For these reasons, Appellant’s claims were given their broadest reasonable interpretation consistent with the specification, and has applied prior art accordingly.

It is also noted that the recitation of “the mobile imaging facility *adapted to be used* at a plurality of locations” is a recitation of the intended use of the claimed invention. There must be a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In this case, Wood ‘035 discloses “the mobile imaging facility *adapted to be used* at a plurality of locations” as discussed above.

(II) At pages 13-16, Appellant argues that Evans and Wood ‘186 fail to disclose a “mobile imaging unit” as recited in claims 1, 9, 13, and 33, as well as their dependent claims.

In response, Appellant notes that both the Wood ‘035 reference and the Wood ‘186 reference illustrate similar ultrasound systems. (See Wood ‘035 Figure 2 and Wood ‘186 Figure 15-17). Appellant’s arguments regarding the Wood ‘186 reference repeat or rely on arguments that were made regarding the Wood ‘035 reference. (See page 15 of Appellant’s brief). Because these arguments have been previously addressed, they are moot in view of the responses given in section 10(I).

In response to Appellant's argument that Evans makes no mention of a mobile imaging unit, the Examiner respectfully submits that Evans was not relied on to teach this feature. The Examiner relied on Evans for teaching for teaching all of the features of claim 1 except a data generator that is "a mobile imaging unit, wherein the mobile imaging unit is a mobile facility adapted to be used at a plurality of locations." (See the rejection of claim 1 above in section 4(A)). The Examiner relied on the Wood '186 reference to teach this feature. The combination of Evans and Wood '186 clearly teach Appellant's invention. At the time of the invention, a person of ordinary skill in the art would have been motivated to combine Evans and Wood '186 to allow remotely located healthcare providers to access patient data (Evans; col. 1 lines 63-66). The Examiner has provided a clear motivation for combining the references directly from the references themselves. For these reasons, a rejection under 35 U.S.C. § 103(a) was proper.

In response to Appellant's argument that Evans is nonanalogous art at pages 14-15, it has been held that a prior art reference must either be in the field of Appellant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the Appellant was concerned, to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Evans is in the field of Appellant's endeavor. Both Appellant's invention and the Evans reference are directed to systems and methods for transmitting medical data between remote computers over a computer network. See Figure 2 of Appellant's specification. See Figure 24 of the Evans reference.

(III) At page 16, Appellant argues that Evans, Wood '186, and Wood '035 fail to disclose a "mobile imaging unit" as recited in claim 3.

In response, Appellant's arguments at page 16 directed to the Evans, Wood '186, and Wood '035 references repeat or rely on arguments that were made in previous sections. Because these arguments have been previously addressed, they are moot in view of the responses given in sections 10(I)-(II).

(IV) At page 17, Appellant argues that Evans, Wood '186, and Rothschild fail to teach or suggest a mobile imaging unit, wherein the mobile imaging unit is a mobile facility adapted to be used a plurality of locations as recited in claims 6, 12, and 16.

The Examiner relied on Wood '186 to teach a mobile imaging unit, wherein the mobile imaging unit is a mobile facility adapted to be used a plurality of locations. See Figures 15-17 of Wood '186 and section 6(A) above. Because the Examiner has addressed that Wood '035 and Wood '186 teach a mobile imaging unit, wherein the mobile imaging unit is a mobile facility adapted to be used a plurality of locations, the arguments at page 17 are moot in view of the responses given in sections 10(I)-(II).

(V) At pages 18-19, Appellant argues that its statements in the Background of the Invention were not admissions of prior art.

In response, the Examiner respectfully submits that various portions of the Appellant's Background of the Invention are prior art. The Examiner did not rely on

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Appellant's statements describing "deficiencies" or "needs" to teach the claimed features of claims 17 and 19-20 as asserted by Appellant. Instead, the Examiner relied on the portions of the Background of the Invention describing the state of the art at the time the application was filed. For example, in paragraphs 2-3 of the originally filed specification, Appellant describes a typical use of mobile imaging units in healthcare facilities. Appellant uses language such as "currently" and "typically" (see paragraphs 3-5) throughout the Background of the Invention. This language is describing the current and typical uses for mobile imaging units, Application Service Providers, and data centers. Based on this discussion in the Background of the Invention, Appellant further describes new uses of these well known "mobile imaging units," "Application Service Providers," and "data centers" (see par. 2-7) within the later pages of the specification. For these reasons, the Background of the invention was appropriately relied on as prior art to teach a medical application center and a mobile imaging unit as recited in claim 17.

(VI) Appellant's arguments at page 19 repeat or rely on arguments that were made in previous sections. Because these arguments have been previously addressed, they are moot in view of the responses given in section 10(I).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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January 22, 2007

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